IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6450 OF 2004

Haribhau Vithu Mhatre ...Petitioner

Versus

Zilla Parishad Thane & Ors. ...Respondents

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Mr. R.P. Lote, counsel for Petitioner

Mr. C. S. Joshi, counsel for Respondent No.1

Mr. A.H. Palekar, counsel for Respondent Nos. 4 and 6.

Mr. D.J. Deshmukh, counsel for Respondent No.5.

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CORAM: B. H. MARLAPALLE, J.

DATED: 1ST FEBRUARY, 2005

P.C.:-

1. Heard the learned counsel for the respective parties.

2. Rule. Respective parties waive service. By consent taken up for final hearing.

3. The petitioner came to be elected as a Sarpanch of village Mharal in Kalyan Taluka of Thane District and the Standing Committee of Thane Zilla Parishad by its Resolution No. 166 passed on 23.4.2003 removed him from the said post and this order of removal

dated 21.5.2003 passed by the Chief Executive Officer, Zilla Parishad, Thane came to be challenged in an Appeal before the Divisional Commissioner, Kokan Region. The Appeal was allowed vide judgment dated 30.8.2003 and, therefore, the complainant i.e. Shri. Shivaji Deshmukh has submitted a Revision under Section 155 of the Bombay Village Panchayat Act, 1958 before the State Government. The said Revision has been allowed by the Hon'ble Minister of State for Rural Development on 20.6.2004 and thus, the order of removal passed by the Zilla Parishad came to be confirmed. Hence, this petition.

4. One of the legal issues raised in this petition is regarding the validity of enquiry conducted by the Standing committee of the Zilla Parishad into the charges allegedly levelled against the petitioner. By referring to the provisions of section 39(1) of the Bombay Village Panchayat Act, 1958 it has been submitted that it was mandatory for the Chief Executive Officer, Zilla Parishad to conduct the said enquiry by himself and he could not have delegated his powers to any subordinate officer or authority. Reliance in this regard has been placed on the decision of this Court in the case of **Nimba Yadav Bhoi Vs. President, Standing Committee, Zilla Parishad, Jalgaon and Ors. reported in 2002 (3) Mh.L.J. 466.**

5. Whether the Standing Committee is subordinate to the Chief Executive Officer of the Zilla Parishad or whether the said Chief Executive Officer had delegated his powers need not be gone into at this stage, more so because both the parties are not averse to a fresh enquiry to be conducted by the Chief Executive Officer, Zilla Parishad, Thane. This course would also be justified to take respective contentions to logical conclusions on merits.

6. In the result, the petition stands allowed partly and the impugned order of removal passed by the Chief Executive Officer, Zilla Parishad, Thane on 21.5.2003 is hereby quashed and set aside. It is directed that the Chief Executive Officer, Zilla Parishad, Thane would conduct a fresh enquiry in to the charges levelled against the petitioner. During the course of enquiry, all the parties concerned shall be heard and it will be completed as expeditiously as possible and in any case within a period of two months from the receipt of writ of this Court. The respective parties have undertaken before this Court that they would extend their full co-operation to ensure that the enquiry whould be completed within the said stipulated period. Needless to mention that the copies of the complaint will be served on the petitioner and other parties concerned on the first

date of hearing and the respective parties will appear before the Chief Executive Officer on 7.2.2005. The Zilla Parishad Thane will consider the report to be submitted by the Chief Executive Officer on its own merits and pass appropriate fresh orders, if any.

7. Rule made absolute partly in terms of the above order with no order as to costs.

8. Writ to go forthwith.